IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Jerry DOTY, et al.	Conf. No.	7831
Serial No.:	09/753,307	Art Unit.:	2614
Filed:	December 29, 2000	Examiner:	Karen L. LE
For:	METHOD FOR SWITCHING ACTIVE CALLS		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

UNDER 37 C.F.R. § 41.41

Comments on the Examiner's Response to Arguments

In the Response to Argument section of the Examiner's Answer, the Examiner has failed to even attempt to rebut the majority of the applicant's arguments for patentability. For the convenience of the Board, the applicant submits the following table showing the correspondence between the Appeal Brief and the Examiner's Answer.

Appeal Brief Argument	Location in Appeal Brief	Location in Examiner's Answer
No supporting rationale for combination of Chong and Denby	Page 6	Not Addressed
No supporting rationale for combination of Chong, Denby, and Zeck	Page 7	Not Addressed
Chong and Denby teach away from the proposed combination	Pages 7-8	Not Addressed
Impermissible hindsight	Page 8	Not Addressed

The combination does not teach initializing a second processor while a current call is being processed on a first processor	Page 9	Not Addressed
The combination does not teach repeating the switching of calls from the first processor.	Pages 9-10	Not Addressed
The combination does not teach determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls	Page 10	Pages 7-8
The combination does not teach releasing the first processor from further processing of the call	Page 11	Not Addressed
The combination of Chong and Denby does not teach processors being located within the same module, in different modules on the same card, or on different cards in the network device	Page 12	Pages 8-9
The combination of Chong and Denby does not teach initializing a second processor comprising initiating a retrain sequence on the second processor	Pages 12-13	Not Addressed
The combination of Chong and Denby does not teach information about a current call including modulation	Page 13	Not Addressed
The combination of Chong and Denby does not teach a medium comprising a downloadable file	Page 14	Not Addressed
The database taught in Chong is not equivalent to the claimed features	Pages 15-16	Not Addressed
The combination of Chong and Denby does not teach a modem ISDN channel aggregation device	Page 16	Not Addressed
The combination of Chong, Denby, and Zeck does not teach copying compression dictionary tables from the first entity and loading compression tables in a second entity	Pages 16-17	Pages 9-10
The combination of Chong, Denby, and Zeck does not teach information about a current call including a country code	Page 17	Page 7

Considering that the Examiner's Answer does not address the vast majority of the applicant's arguments for patentability, the applicant requests that the Board consider these arguments conceded and overturn the Examiner's rejections of the applicant's claims.

Because the Examiner has not addressed most of the arguments submitted in the Appeal Brief, the applicant will not waste the Board's time repeating those arguments here. Instead, the below comments are directed solely to the issues actually addressed in the Examiner's Answer.

The combination of Chong and Denby does not teach determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls.

Claim 1 recites "determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls." In the Appeal Brief, the applicant pointed out that Denby does not teach this feature as the Examiner proposes and thus the combination of Chong and Denby does not teach this feature. In the Examiner's Answer, the Examiner continues to assert that Denby teaches "determining that a time has been reached for an upgrade of firmware on a first processor that is actively handling calls", without providing any substantive rebuttal to the applicant's prior arguments. As pointed out in the Appeal Brief, Denby does not teach a first processor that is actively handling calls or that a determination is made to upgrade the firmware of such a processor. Denby simply provides general teachings regarding upgrading products over a network (*see* Denby, col. 1, line 64 to col. 2, line 46). Thus, Denby does not teach the features of the claim, and the Examiner's Answer has not provided any rebuttal to the applicant's arguments for patentability in the Appeal Brief.

The combination of Chong and Denby does not teach processors being located within the same module, in different modules on the same card, or on different cards in the network device, as recited in claims 2-4.

In the Appeal Brief, the applicant pointed out that the portions of Chong cited by the Examiner do not teach these features of the claims. Rather than pointing to specific teachings of Chong to refute the applicant's arguments, the Examiner is now asserting that "it is notoriously old and well known in the call center art that the database 103 also includes processors, modules and cards. The exact location of the processor is not believed to be critical and may obviously be located in many suitable locations" (*see* Examiner's Answer, page 9). Having taken the position throughout prosecution of the application that Chong teaches these features, the Examiner now appears to be trying to use official notice to assert that the features are obvious. However, official notice is wholly inappropriate to be raised for the first time in an examiner's answer on appeal. Not only has the Examiner not rebutted the applicant's arguments, the Examiner is implicitly acknowledging their validity by changing the grounds of rejection. Consequently, the applicant requests that the Board reverse the Examiner's rejections of claims 2-4.

The combination of Chong, Denby, and Zeck does not teach copying compression dictionary tables from a first entity and loading compression tables in a second entity, as recited in claim 5.

The applicant argued in the Appeal Brief that just because Zeck includes the words 'dictionary,' 'compression,' and 'method' does not mean that it teaches all of the features of the claim or that it would be obvious to combine Zeck with Chong and Denby. In the Examiner's Answer, the Examiner acknowledges that the teachings of the references are deficient, but then asserts "it is old and well known in the telecommunication system at the time the invention was made to compress and decompress data while transmission to have larger volume of data" (*see* Examiner's Answer, page 10). Once again, the Examiner is raising official notice for the first time in the Examiner's Answer.

However, the Examiner is explicitly acknowledging that the references do not teach the features of the applicant's claims.

Further, even if the Examiner's official notice is taken as correct, it still does not teach the features of the claim. A general knowledge in the art of the existence of compression in data transmission does not teach the specific features recited in the claim, namely copying compression dictionary tables from a first entity and loading compression tables in a second entity. The official notice does not address any of these features.

Finally, the Examiner asserts "Chong teaches transferring calls from first entity to second entity. Thus, the combination of chong and Zeck does teach compressing and decompressing data while transmission to have larger volume of data" (*see* Examiner's Answer, page 10). However, the Examiner's conclusion does not follow logically from the premise. Just because Chong teaches that calls are transferred does not mean that data transmission is necessarily compressed. There is nothing in Chong to suggest that any data is compressed and the fact that Chong teaches transferring calls does not change that.

For each of these reasons, the Examiner has failed to rebut the applicant's arguments for patentability. Consequently, the applicant requests that the Board reverse the rejection of claim 5.

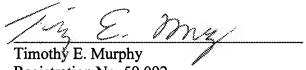
The combination of Chong, Denby, and Zeck does not teach information about a current call including a country code, as recited in claim 8.

In the Appeal Brief, the applicant argued that even if a county code is known in the art, this fact still does not teach the claimed feature that refers to information about a current call including a country code. Rather than rebutting this argument, the Examiner continues to assert

that a country code is "old and well known in telecommunication system" (*see* Examiner's Answer, page 10). However, even if this is taken as true, it still does not establish the obviousness of the applicant's claim. The claim refers to collecting information about a current call on a first processor that includes a country code. Thus, the mere existence of country codes is not sufficient to teach all of the features of this claim. Consequently, the applicant requests that the Board reverse the rejection of claim 8.

For each of the reasons discussed above, as well as the un-rebutted arguments presented in the Appeal Brief, the applicant requests that the Board reverse the Examiner's rejections and allow the applicant's claims.

Respectfully submitted,
MARGER JOHNSON & MCCOLLOM, P.C.



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